



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 14, 1993

Mr. Jerry D. Sebek
Records Manager
City of Bellaire Texas Police
5110 Jessamine Street
Bellaire, Texas 77401

OR93-286

Dear Mr. Sebek:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14482.

You have received a request for information relating to a closed investigation by the City of Bellaire Police Department ("department"). Specifically, the requestor seeks "any and all records regarding case No. 9105973," including, "the official police report and any other police documents, all statements made by [two witnesses], all statements made by any other witnesses, and all documents, photographs and exhibits regarding this matter." You claim that release of some of the requested information would constitute an invasion of privacy.

Although you do not say so explicitly, you also appear to claim that the requested information is excepted from required public disclosure by section 3(a)(8), the law enforcement exception. Section 3(a)(8) excepts from required public disclosure:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

This office has stated in previous open records decisions that the test for determining whether records related to a closed case are excepted from public disclosure under section 3(a)(8) is whether release of the records would unduly interfere with law enforcement and crime prevention. Open Records Decision Nos. 553 (1990) at 4; 474 (1987) at 5. When the "law enforcement" exception is claimed as a basis for excluding

information from public disclosure, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release of it would unduly interfere with law enforcement. Open Records Decision Nos. 434 (1986) at 2. In determining whether information would unduly interfere with law enforcement, this office uses a case-by-case approach. Open Records Decision No. 452 at 2.

You advise us that the investigation to which the requested information relates has been closed. You have not explained how or why release of the requested information would interfere with law enforcement. In our opinion, the information does not present an explanation on its face. We conclude, then, that the requested information may not be withheld from required public disclosure under section 3(a)(8) of the Open Records Act.

Section 3(a)(1) of the Open Records Act excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 3(a)(1) protects information made confidential by common-law or constitutional privacy interests. In *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court ruled that the doctrine of common-law privacy excepts only "information contain[ing] highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person," provided "the information is not of legitimate concern to the public." The test for constitutional privacy involves a balancing of the individual's privacy interests against the public's need to know information of public concern, and it must concern the most intimate aspects of human affairs. See Open Records Decision No. 455 (1987) at 5. The constitutional right of privacy protects information relating to marriage, procreation, contraception, family relationships, and child rearing and education. Open Records Decision No. 447 (1986) at 4. Open Records Decision No. 262 (1980) held that information about a patient's injury or illness might implicate constitutional or common-law privacy interests if it relates, for example, to a "drug overdose," "acute alcohol intoxication," "obstetrical/gynecological" illness, "convulsions/seizures," or "emotional/mental distress." When information relates to injuries or illnesses that fall within these protected categories, such information should not be released. *Id.*

You claim that release of information relating to a witness's alcohol problems would constitute an invasion of privacy. We agree. For your convenience, we have marked the information that may be withheld from required public disclosure under section 3(a)(1) of the Open Records Act. The remainder of the information, however, does not meet the tests for either common-law or constitutional privacy. Accordingly, it may not be withheld from required public disclosure under section 3(a)(1) and must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Rebecca L. Payne
Section Chief
Open Government Section

RLP/GCK/le

Ref: ID# 14482

Enclosures: Marked Documents
Open Records Decision Nos. 553, 474, 455, 452, 447, 434, 287, 262

cc: Mr. Paul F. Jones
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(w/o enclosures)